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HOUSE COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
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Mr. Chairman, Mr. Ranking Member, Members of the Subcommittee. Thank you for the opportunity to be with you today. I am Michael G. Roberts, senior vice president and general counsel of Crowley Maritime Corporation, a large, American domestic shipping company. We are a diversified marine transportation and logistics company based in Jacksonville, Florida. We employ about 3,000 American mariners, and have invested nearly \$3 billion in vessels built by American workers in U.S. shipyards. Vessels in our fleet serve customers in Alaska, the U.S. West, East and Gulf coasts, the Caribbean and Central America.

I am here today in my capacity as Vice President of the American Maritime Partnership (“AMP”). AMP is the largest maritime legislative coalition ever assembled. Our organization includes all elements of the American domestic maritime industry—shipping companies, ship construction and repair yards, mariners, and pro-defense organizations. Our singular focus is the Jones Act, the foundational law of our industry. As everyone in this room knows, the Jones Act requires that cargo moved by water in our home markets – between two points in the United States – be transported on American vessels.

Putting this law into context requires a constant reminder that very different legal and regulatory systems govern domestic and international shipping. This is important in understanding why those markets may have different economic conditions, and in considering policy choices affecting this industry. “Normal” regulatory principles apply to domestic shipping in the sense that those who operate in American domestic trades must obey American laws. Ships must be registered under the U.S. flag, which means that in a legal sense, the vessels themselves are considered a part of American sovereign territory. The ship owner and all involved must comply not only with rules that apply particularly to the maritime industry, but also to rules applicable to American businesses generally. This includes immigration (officers and crew of a U.S. flag ship must be American citizens), employment, environmental, safety, tax, and other laws.

Because ships in international trade do not operate within any single national jurisdiction, ship owners can simply pick the jurisdictional home of every element of their business, including, most importantly, where their ships are registered.¹ This is not permitted in any

¹ Ship owners usually choose jurisdictions that minimize tax and regulatory burdens. According to a 2010 UN report, the top five registries for international shipping are: Panama, Liberia, Marshall Islands, Hong Kong, and Greece. These jurisdictions, which account for .4% of world population, register more than 50% of the world’s tonnage. U.S. flag vessels (including domestic and international) accounted for 1% of world tonnage, while U.S. population accounts for about 4.5% of the world total.

domestic service business. For example, a restaurant or factory owner cannot plant the flag of another country at his / her facility in Poughkeepsie and declare it to be no longer part of America, so that they can reduce costs, replace American workers with foreign workers, eliminate U.S. tax liability, etc. Because of the Jones Act and other “cabotage” laws in the U. S. and other countries, domestic shipping, aviation, and other service industries are governed by “normal” regulatory principles, *i.e.*, the laws of the country in which they operate.

Those who support free enterprise and fair competition support the Jones Act. It is not protectionist to insist that maritime work performed within our country be handled by American workers and under American laws. To the contrary, it is an appropriate assertion of our basic sovereignty as a country to prohibit foreign workers operating under foreign rules from operating within our domestic economy. That is the fundamental purpose and effect of the Jones Act.

With that background, if there were one word to describe why we have a Jones Act in our country it would be “security.” The Jones Act provides important national, economic and homeland *security* benefits throughout our country. Simply put, our nation needs a critical mass of Americans who know how to build and operate ships. The commercial American maritime industry provides that critical mass – the expertise and resources needed to provide surge and sustainment sealift capacity during a military contingency, and the basis on which to scale up our maritime capabilities should the need arise. Without the Jones Act (and the Maritime Security Program and Cargo Preference laws in international trade), the overwhelming operating advantages of foreign flag ships, and the overwhelming subsidies and other advantages of foreign shipbuilders, would quickly drive Americans out of the industry.

The national security and homeland security benefits have been well-documented through writings and statements by the Defense Department, Coast Guard, and Customs and Border Protection officials, as well as independent experts like the Lexington Institute. For example, recently former Defense Secretary James Mattis referred to the U.S. Merchant Marine as our nation’s “Fourth Arm of Defense.” I will discuss the economic security benefits in a moment. But in every case, the policy rationales for the Jones Act can be summarized in the phrase “American security.”

Summary of Key Points

Today I would like to talk about two topics. First, I will provide you a brief update on the state of the American domestic maritime industry. Second, I will talk about one issue that threatens to undermine our industry, and that is possible changes to longstanding interpretations of the Jones Act administrative waiver process. Nothing is more essential to the long-term investments that are necessary for success in our industry than a reliable, predictable, and consistent legal framework.

State of the American Maritime Industry

The American maritime industry is comprised of many different segments, from large ocean-going ships to small river barges, from inland towboats to huge offshore development ships. Scores of shipbuilding and repair yards dot our coastlines and river systems. Vibrant

industries support our shipbuilding and ship operations, from naval architects to the suppliers of nearly everything needed to build and operate a vessel. Thousands of young Americans enter the industry each year, including men and women with engineering and technical degrees (and practical experience) from our maritime academies, as well as those with no college education who are looking to work hard, earn a decent living and start a family.

The American domestic maritime industry is strong—growing, innovating, and thriving. A recent study by PricewaterhouseCoopers for an AMP board member, the Transportation Institute, shows that ours is an industry that supports total employment of about 650,000 Americans and total economic impact of more \$150 billion annually. There are approximately 40,000 vessels in the U.S. fleet distributing 877 million short tons of cargo annually in a highly efficient, cost-effective and environmentally friendly manner. These jobs and economic benefits touch almost every corner of America, and we would be happy to visit with your offices to describe the industry's presence in your districts.

Americans are among the world leaders in innovating the maritime industry. We are building and operating many of the most advanced tug boats to escort tankers through our waters, and highly sophisticated vessels to support safe offshore resource development. Several American shipyards and operating companies are beginning to build and deploy clean burning liquified natural gas (LNG) in a variety of different applications.

Those who oppose the Jones Act seek to destroy this American industry and outsource these jobs because foreign workers would be cheaper. AMP exists to resist those efforts by educating policy makers and the public about our industry.

The Core Element of Continued Success—Legal Certainty

We have one primary request when it comes to the Jones Act and that is legal certainty. Americans who invest their time and money into this industry need to have confidence that their commitments will not be undermined by capricious decisions that undo the legal framework of the Jones Act. This includes all participants, from young Americans who commit their career choices to this industry, to those in the financial sector. We exist in a highly technical and capital-intensive business, and our human and financial investments in vessels and other infrastructure are long-term. All of us make those commitments in reliance on U.S. law as it stands today and as it has generally stood for nearly 100 years. Our single biggest concern is unanticipated changes to the rules “in the middle of the game.” It is critically important that the legal, regulatory and administrative framework that serves as the foundation for the American maritime industry remains predictable and certain. Hundreds of thousands of Americans depend on that.

In that light, our greatest concern today would be changes to longstanding, consistent interpretations of the Jones Act administrative waiver rules. As you know, administrative waivers to the Jones Act are exceedingly rare and are granted only under the specific requirements of 46 U.S.C. § 501, a law not specific to the Jones Act but permitting waivers of “navigation or vessel-inspection laws” under certain extremely limited circumstances. The core requirement of § 501 is that Jones Act waivers must be “necessary in the interest of national

defense.”² “Necessary,” of course, means an action that is “essential or required.” As such, the applicants for this waiver must demonstrate that approval is required or essential for national defense. In fact, Customs and Border Protection (CBP), the agency within the Department of Homeland Security with initial responsibility for managing administrative waiver requests, has recognized that the burden for approval of an administrative waiver is high and has ruled that there must be a showing of an “immediate and adverse impact to national defense.” Indeed, CBP has repeatedly held in their rulings that a Jones Act waiver cannot be issued solely for economic reasons or economic benefit. The Defense Department has historically analyzed administrative waivers by asking if there would be an “immediate adverse impact on defense operations” absent the waiver.

Into this longstanding statutory regime governing administrative waivers of the Jones Act has come the Government of Puerto Rico, which in December filed a request for an unprecedented 10-year administrative waiver under § 501 to import LNG from domestic sources. There are many reasons why this administrative waiver should not be granted. There is no precedent for a waiver of anywhere near that length. The longest waiver we can recall was for 30 days following Hurricane Katrina.

Moreover –

- American shipping companies are taking U.S. LNG to Puerto Rico today on Jones Act vessels. They move scores of ISO tank loads of LNG from Florida to San Juan to power industrial facilities on the island. They created this market five years ago, a market that is expected to grow over the next few years as Puerto Rico moves toward a more diversified and resilient power generation and distribution system.
- It is grossly misleading to claim that there are no *bulk* LNG Carriers (LNGCs) in the Jones Act fleet today. First, such vessels are not built “on spec” but are rather built to meet the needs of customers based on contracts to move products in particular markets. No such contracts for domestic markets have yet been agreed. Second, a 1996 waiver would have allowed scores of LNGCs to become Jones Act vessels over the past 22 years, including many that could still be used today. *Not once has that waiver been used – because there has been no market for bulk LNG shipments from the U.S. to Puerto Rico.*
- There *still* is no market for bulk LNG cargoes from the U.S. to Puerto Rico. The one facility on the island that can physically receive bulk LNG is under a long-term contract to receive LNG from Trinidad. One proposed facility might be able to receive relatively small bulk shipments in the near term *if* it can clear regulatory and financial hurdles. (That same facility, however, could be used to compete with the existing LNG ISO tank business moving on Jones Act vessels.) Every other LNG receiving facility on the island is conceptual – it exists on paper with no concrete plans for actual development. It would likely take several years for any of these concepts to be developed. Hence, any LNG waiver would not even be used for months if not years.

² 46 U.S.C. § 501.

- Given the possibility that bulk LNG shipments could develop over the next five years, American carriers have begun actively exploring building Jones Act LNGCs in American shipyards. They have proposed different ship sizes and configurations to shipyards in Pennsylvania, Florida, Mississippi, Louisiana, Texas, California, and elsewhere, asking the shipyards for design options and indicative pricing. With that information, serious discussions can take place with LNG power developers about shipping contracts that would justify making binding contracts with shipbuilders. Thousands of good paying, skilled jobs could be developed building LNGCs in those states. Those jobs support the defense industrial base and the Jones Act would be working exactly the way it was intended.

Returning to the technical basis for issuing an administrative waiver, there simply is no credible argument that Puerto Rico's request for a 10-year Jones Act waiver is "necessary in the interest of national defense." Puerto Rico government officials have repeatedly described their interest in LNG in economic terms. AMP appreciates the desire of Puerto Rico to reduce its energy costs and, as noted, AMP members are actively engaged to find solutions that comply with all laws, including the Jones Act, to achieve that goal. No one is better positioned than the leading participants in the domestic shipping industry to assess the economics of moving LNG to Puerto Rico. We are confident that solutions can be developed that will comply with American law, provide thousands of family-wage skilled jobs to Puerto Ricans and other Americans, and achieve the substantial savings touted by Puerto Rico's leaders. Stated otherwise, Puerto Rico can fully realize the benefits of shifting to an LNG energy supply without bypassing Puerto Rican and other American workers in the American maritime industry.

There have been other recent discussions regarding waivers to move LNG to the Northeast. In addition, one prominent oil and gas executive has publicly called for a national waiver to move LNG. But a waiver under these circumstances would face the same challenge as the Puerto Rico waiver—they *would require a complete administrative reinterpretation of the waiver statute and its unambiguous "interest of national defense" requirement*. As we have said previously, there are no precedents for long-term waivers and no precedent for economic waivers.

As markets develop and if the price of domestic natural gas remains low, customers and developers are likely to enter into the types of long-term gas supply contacts that will bring state-of-the-art Jones Act LNG vessels into those markets. Granting an administrative waiver, however, would kill the further development of American LNG vessels. In fact, the novel use of the § 501 authority for an extended LNG administrative waiver could destabilize the entire American domestic shipping industry by introducing extreme uncertainty and volatility into the market.

Finally, Congress can waive the Jones Act for specific vessels or services, imposing terms and conditions that accommodate the specific need without undermining the core objectives of the Jones Act. If proponents of the Puerto Rico LNG waiver believe they can make an appropriate showing, they should engage with Congress and the American maritime industry to search for solutions.

Conclusion

Again, thank you for allowing us to be with you today for one of the first Subcommittee hearings under your leadership. We are grateful for the chance to tell our story and to emphasize to you the exciting growth of our industry. Our industry is a great American success story, and the key to our continued success is a predictable, sound, consistent legal framework so that we can “deliver the goods” for our nation.